



Atty. Dkt. No. 053466-0395

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Noboru MAKI et al.
Title: HBV PRECORE PROTEIN HAVING A
PARTICLE-FORMING ABILITY
Appl. No.: 10/526,744
International Filing Date: 9/5/2003
371(c) Date: 3/25/2005
Examiner: Bo PENG
Art Unit: 1648
Conf. No.: 7902

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which has not yet issued.

The Patent Office determined that the patent was entitled to 316 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

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On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 679 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 766 days

(b) Total Applicant delay: 87 days

Final PTA Determination: 679 days

Applicants therefore respectfully request that the patent be accorded 679 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

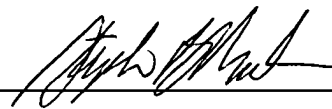
However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date December 16, 2009

By _____



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Patent Term Adjustment Calculation System



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Docket Number: 053466-0395

Application Number: 10/526744

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	09/06/2002	-912		
Edit Delete	International Filing Date	09/05/2003	-548		
	PCT National Stage Commencement Date	03/06/2005	0		
Edit Delete	National Stage Transmittal (NOT all 371(c) Requirements Met)	03/07/2005	1		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	03/25/2005	19		
Edit Delete	Notice to File Missing Parts	07/27/2005	143		
Edit Delete	Response to Notice of Missing Requirements	09/13/2005	191		
	14 month From Application date	05/25/2006	445		
Edit Delete	Restriction Requirement	06/25/2007	841	396	
Edit Delete	Restriction Requirement Response Received at PTO	08/24/2007	901		
Edit Delete	Non-Final Office Action	12/14/2007	1,013		
	3 Year Period Starts	03/06/2008	1,096		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/14/2008	1,104		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	07/14/2008	1,226		
Edit Delete	Final Office Action	07/21/2008	1,233	(7)	
	Final Office Action + 3 months	10/21/2008	1,325		
Edit Delete	Notice of Appeal Received at PTO	01/16/2009	1,412		87
Edit Delete	Request For Continued Examination (including amendment)	03/11/2009	1,466	370	
	3 Year Period Stopped	03/11/2009	1,466		
Edit Delete	Non-Final Office Action	04/29/2009	1,515		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	07/24/2009	1,601		
Edit Delete	Notice of Allowance	09/17/2009	1,656		
	Projected Patent Grant Date	03/30/2010	1,850		
			Totals:	766	87
			PTA:	679	

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IP: 10.14.41.156

Foley & Lardner LLP